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Simple Justice Gets Complicated

By PEDRO A. NOGUERA*

In assessing the impact of *Brown v. Board of Education*¹ forty years after it was rendered, it now seems easier to point out the many ways in which the hopes raised by that landmark case have been unfulfilled than it does to point out its accomplishments. So many important changes have been connected to the legacy of *Brown*² that some disappointment over the many things that remain unattained in its wake should not be surprising.

For example, forty years after *Brown*, the persistence of racial separation, or "de facto" segregation, in our public schools is so common and pervasive that today truly integrated schools are more likely to be seen as the exception rather than the rule. According to the National School Boards Association, nearly two thirds of African-American children (63%) still attend racially segregated schools.³ In California for example, although only 9% of the students enrolled in public schools are African-American, 76.6% of them attend predominantly African-American schools.⁴ Similar patterns exist in most other states with significant African-American populations, though in the South there are, surprisingly, some notable exceptions.⁵

To a large extent, the persistence of racial segregation in schools is due to neighborhood patterns of racial separation which have become so pronounced in recent times that in many parts of the country there is a

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1. 347 U.S. 483 (1954)

2. For example, the birth of the civil rights movement, the shift in federal policy in favor of civil rights, and the desegregation of higher education can all be traced back to *Brown*.

3. NATIONAL SCHOOL BOARDS ASSOCIATION, STATUS OF SCHOOL DESEGREGATION 32 (1989).

4. *Id.*

5. Though much of the emphasis in early desegregation efforts has been placed on the South, states such as Kentucky and North Carolina have lower rates of African-American students attending segregated schools (6.6% in Kentucky, 37.5% in North Carolina) than most northern states. ANDREW HACKER, TWO NATIONS: BLACK AND WHITE, SEPARATE, HOSTILE, UNEQUAL 162 (1992).

nearly perfect correlation between race and zip code.⁶ Some scholars have argued that school desegregation has contributed to increased physical and social distance between the races.⁷

In most cities and towns across the United States, desegregation of the schools was followed immediately by white flight, either to exclusive private schools or out of the city altogether.⁸ Several school districts have attempted to counter this trend by introducing voluntary desegregation schemes such as magnet schools.⁹ While some school districts have found success with this method, for the most part voluntary desegregation has been no more effective in producing racially integrated schools than more heavy-handed methods such as forced busing.¹⁰

Even where busing, the remedy most typically used by courts to address racial disparities in school enrollment, has been introduced to facilitate desegregation, racially mixed schools have not always been obtained. In cities like San Francisco where busing programs are still in effect, it is not uncommon to find children transported great distances to schools offering little in the way of ethnic diversity or improved educational services.¹¹ The continuation of such practices in order to maintain compliance with court decrees has led many to view busing as little more

6. This phenomenon is known as "hypersegregation." Massey and Denton coined the term to describe the increase in residential segregation. See Douglas S. Massey & Nancy A. Denton, *Hypersegregation in U.S. Metropolitan Areas: Black and Hispanic Segregation Along Five Dimensions*, 26 DEMOGRAPHY 373, 373-91 (1989). See also MARTIN MARGER, RACE AND ETHNIC RELATIONS—AMERICAN AND GLOBAL PERSPECTIVES 83 (1985).

7. For a discussion of the impact of school desegregation on patterns of residential segregation, see A COMMON DESTINY: BLACKS AND AMERICAN SOCIETY 365-74 (Gerald Jaynes & Robin A. Williams, Jr., eds., 1987); WILLIAM WILSON, THE TRULY DISADVANTAGED 57-58 (1987).

8. MARY H. METZ, CLASSROOMS AND CORRIDORS: THE CRISIS OF AUTHORITY IN DESEGREGATED SECONDARY SCHOOLS 9-11 (1978).

9. Magnet schools are generally organized around a particular theme, such as art and music or science and technology, which serves as a primary guide for the development of curriculum across disciplines. Although schools offering a specialized curriculum have been around for a long time, in several school districts throughout the country, magnet schools were developed to encourage voluntary integration. For a discussion of magnet schools and their role in desegregation efforts, see DANIEL U. LEVINE & ROBERT J. HAVIGHURST, SOCIETY AND EDUCATION 337-43 (1989).

10. For an evaluation of some of the more popular methods used to desegregate schools across the country, see generally RAYMOND WOLTERS, THE BURDEN OF BROWN (1984).

11. School desegregation in San Francisco was brought about as a result of *San Francisco Unified School District v. Johnson*, 479 P.2d 669 (Cal.), cert. denied sub nom. Fehilhaber v. San Francisco Unified Sch. Dist., 401 U.S. 1012 (1971). The decision was significant in that it made San Francisco the first northern city to undergo city-wide busing to achieve racial balance in its schools. Although the immediate impact of the decision resulted in schools that were more integrated, by 1978 less than 20% of the students enrolled in the district were white. For a discussion of the history of school desegregation in San Francisco, see IRA KATZNELSON & MARGARET WEIR, SCHOOLING FOR ALL: CLASS, RACE, AND THE DECLINE

than a costly farce.¹² Not surprisingly, even those organizations that were among the strongest advocates of court-ordered busing now see little value in supporting a policy that results in African-American children being bused to predominately African-American schools while schools in African-American neighborhoods are shut down.¹³

Finally, even where schools have been successfully integrated, too often racial conflict, rather than tolerance or peaceful coexistence, characterizes the state of race relations.¹⁴ Even in Berkeley, California, which in 1969 became one of the first districts in the country to voluntarily desegregate its schools, serious problems with respect to race relations continue to plague the district. In Berkeley and many other cities across the country, considerable emphasis was placed on devising ways to bring students of different races together, while far less attention has been given to improving the quality of interaction between members of different racial groups.¹⁵ Armed with the prejudices of their families and parents, and exposed to ethnocentrism and racial intolerance which pervades our society, many young people come to school unable to appreciate or accept the cultural diversity present among their peers. Instead, difference is perceived as threat, and small misunderstandings justify violent confrontations.¹⁶

Such patterns exist even in districts where whites are no longer present in large numbers. Conflicts between racial minority groups have prompted administrators in some school districts to keep contact between groups to a minimum for the sake of peace.¹⁷ In many areas, schools have become contested territory, where ethnic groups compete, often violently, for dominance and control. Too often, overwhelmed school personnel try to maintain peace during school hours, and look the

OF THE DEMOCRATIC IDEAL 180-89 (1985); DAVID L. KIRP, *JUST SCHOOLS: THE IDEAL OF RACIAL EQUALITY IN AMERICAN EDUCATION* 82-116 (1982).

12. KIRP, *supra* note 11, at 107-09.

13. Objections have been raised by many African-American residents in San Francisco's Hunter's Point community where busing has contributed to the closure of several neighborhood schools and the burden of long bus trips has fallen disproportionately on African-American children. *Id.* at 245-50.

14. For a discussion of the impact of school desegregation on race relations, see LEVINE & HAVIGHURST, *supra* note 9, at 327-31.

15. KIRP, *supra* note 11, at 148-93.

16. Several studies suggest that incidents of violence linked to racial antagonisms are common in school districts across the country. For a discussion of these patterns in New York City, see Howard Pinderhughes, *Racial Violence Among Youth* (1991) (unpublished Ph.D. dissertation, University of California, Berkeley).

17. See WOLTERS, *supra* note 10, at 98.

other way when students do battle after the final bell has rung.¹⁸

A Symptom of Failure?

Citing the failure of school integration has become popular in recent times—partially because it serves as fuel to the growing frustration and anger over the inadequacies of public education. In their arguments for school choice and privatization, conservative critics point to the failure of school desegregation as proof that only those who cannot escape the system have been left behind.¹⁹ Among the litany of charges against public schools, the failure to achieve integration has been cited as proof that the enterprise is bankrupt and needs dismantling.²⁰

The opponents of public education have gained allies from those who recognize not only that integration has not been achieved in many school districts, but also that the disparity in resources which exposed the hypocrisy of “separate but equal” largely have not been addressed.²¹ Imbalances in funding, facilities, technology, and personnel continue to characterize the differences between white and predominantly “non-white” schools. Reflecting on the current state of racial inequality in American education, Johnathon Kozol observed:

For anyone who came of age during the years from 1954 to 1968, these revelations could not fail to be disheartening. What seems unmistakable, but, oddly enough, is rarely said in public settings nowadays, is that the nation, for all practice and intent, has turned its back on the moral implications of the *Brown* decision. The struggle being waged today, where there is any struggle being waged at all, is closer to the one that was addressed in 1896 in *Plessy v. Ferguson*, for which the Court accepted segregated institutions for African-American people, stipulating only that they must be equal to those open to white people. The dual society, at least in public education, seems in general to be unquestioned.²²

In many communities, the continued failure of the public schools has contributed to a decline in support among a growing number of African Americans for integration as it has been implemented. Proposals for

18. For a critique of current approaches to addressing racial violence in schools and a prescription for change, see generally CENTERS FOR DISEASE CONTROL, *THE PREVENTION OF YOUTH VIOLENCE* (1993).

19. David Lee, *Vouchers: The Key to Meaningful Reform*, in *PRIVATIZATION AND ITS ALTERNATIVES* 46, 47 (William Gromeley ed., 1991).

20. These arguments have been made by Chubb and Moe, two of the leading spokespersons for privatization and school choice. See JOHN E. CHUBB & TERRY M. MOE, *POLITICS, MARKETS AND AMERICA'S SCHOOLS* 206 (1990).

21. JONATHON KOZOL, *SAVAGE INEQUALITIES: CHILDREN IN AMERICA'S SCHOOLS* 4 (1991).

22. *Id.*

educating African-American children in racially homogeneous settings have generated considerable interest and support.²³ The advent of schools designated exclusively of African-American males has grown out of the recognition that the public schools have been almost uniformly unsuccessful in serving this population.²⁴

Looking back on the pre-*Brown* days of racially segregated schools, many have noted that while African-American schools received substantially less resources than white schools in the past, in many cases the schools were at least controlled by the African-American community and staffed by African-American personnel.²⁵ Conversely, while today's desegregated schools in African American communities still generally have less resources than those in white areas, they are typically managed by individuals who live outside of their communities and are staffed by teachers who would never dream of sending their own children to such schools.²⁶

For the most part, neither of the two goals of desegregation, reduced inequality in educational resources and improved race relations, have been realized. Instead, forty years after *Brown*, equality in educational opportunities remains an elusive dream. In many areas relations between the races are at an all time low.

The Promise and Potential of *Brown*

When seen in light of the grim realities facing urban public schools in particular, the legacy of the *Brown* decision seems even less meaningful. For all the energy and resources that have been invested to bring about desegregation, most urban schools remain in a state of de facto segregation based on race and class, and the quality of education has generally not improved.²⁷ In 1980, 62.9 percent of all African American children attended schools that enrolled 50 percent or more minority stu-

23. See ROY L. BROOKS, *RETHINKING THE AMERICAN RACE PROBLEM* 78 (1990).

24. Several authors have noted the frustration experienced by African American parents over the failure of desegregation efforts to address racial inequalities in education. In several cities, this frustration has led to a growth in support for these initiatives. See, e.g., Wade Smith & Eugene Moore, *Positive Segregation?: The Consequences of Separate Schools for African American Males* (unpublished paper, Department of Sociology, Arizona State University, 1990).

25. See DOUGLAS GLASGOW, *THE BLACK UNDERCLASS* 53-69 (1980).

26. See CHARLES PAYNE, *GETTING WHAT WE ASK FOR* 17-35 (1986).

27. For a discussion of the lack of progress in improving the academic achievement of African American children, see JENNIFER L. HOCHSCHILD, *THE NEW AMERICAN DILEMMA: LIBERAL DEMOCRACY AND SCHOOL DESEGREGATION* 5 (1984); Rodney Reed, *The Education and Achievement of Young Black Males*, in YOUNG, *BLACK AND MALE IN AMERICA* 162 (Jewell T. Gibbs ed., 1987).

dents, while 33.2 percent attended schools that were 90-100 percent minority.²⁸ As Jennifer Hochschild notes, the tendency for "green to follow white" results in school districts that are predominantly minority receiving substantially less funding than schools that enroll larger numbers of whites.²⁹

Yet as important as these unresolved issues are, they are not the only criteria upon which the legacy of *Brown* should be judged. Viewed in the historical context of this country's race relations, *Brown* signified a critical turning point in the evolution of civil rights. It represented a clear sign that legal opinion had shifted in favor of those previously disenfranchised in the public schools and elsewhere with the blessings of the courts.³⁰ The ruling, however, has meant much more than "simple justice" through integration in public education. Whether intended or not, the Court's decision raised questions of equality in educational resources. In subsequent state and federal policies, application of *Brown's* principles have extended well beyond equality of opportunity and ventured into the realm of equality as measured by results.³¹

During much of the 1960s and 1970s, school desegregation efforts focused largely on removing racial barriers and eliminating discriminatory practices.³² With the backing of the courts and federal troops when necessary, most public educational institutions were forced to eliminate official discrimination and exclusion. As these obstacles were removed, however, it became increasingly obvious that "second generation segregation" and "re-segregation" within schools would continue to function as major obstacles to the realization of educational equality.³³

Nowhere has the difference between desegregation and equality in education been more obvious than in Boston, Massachusetts. Throughout the 1970s, the battle over school desegregation through court-or-

28. See GARY ORFIELD, *PUBLIC SCHOOL DESEGREGATION IN THE UNITED STATES, 1968-1980* 4 (1983).

29. HOCHSCHILD, *supra* note 27, at 27. See also KOZOL, *supra* note 21, at 236-38.

30. For a critical discussion of the effects of *Brown* on civil rights, see Robert Carter, *A Reassessment of Brown v. Board*, in *SHADES OF BROWN: NEW PERSPECTIVES ON SCHOOL DESEGREGATION* 20-28 (Derrick Bell ed., 1980).

31. For a discussion of the debate over equality of results, see CHRISTOPHER JENCKS, *INEQUALITY: A REASSESSMENT OF THE EFFECT OF FAMILY AND SCHOOLING IN AMERICA* 3-15 (1972).

32. KENNETH MEIER ET AL., *RACE, CLASS AND EDUCATION: THE POLITICS OF SECOND-GENERATION DISCRIMINATION* 40-48 (1989).

33. Roy Brooks refers to second generation segregation as a trend which typically occurred following "white flight" to the suburbs or private schools after the implementation of mandatory busing. Resegregation within schools is a process through which classes within a school as a result of various forms of tracking (grouping based on perceive/measured ability). BROOKS, *supra* note 23, at 78.

dered busing contributed to violent confrontations between African-American and white residents. Believing that integration was the key to improving the quality of education received by African-American children, African-American parents allowed their children to be bused into white communities where they were confronted with extreme hostility and resentment. By the late 1970s, however, support for busing in Boston's African-American community began to fade, as African-American parents realized that the quality of education in the newly integrated schools was no better than that in the previously segregated African-American schools.³⁴ Subsequent actions taken by the courts to monitor desegregation efforts acknowledged that "the quality of instruction in Boston Public Schools has been so poor for so long that a redistribution of resources would not guarantee the plaintiff class the equal protection they were entitled to under law."³⁵ In order to actually improve the quality of education in Boston's public schools, the courts have had to recognize the necessity of upgrading Boston's entire educational system.

Boston is not unique. Throughout the country, interest in desegregation has been eclipsed by concerns over inequality in funding and the poor quality of education available in low income areas. The persistence of significant disparities in resources between white and non-white districts has become the source of considerable political controversy. In New Jersey and Texas, efforts to promote equity in funding have met fierce opposition, not unlike that generated by court-ordered desegregation.³⁶ However, with *Brown* and several subsequent court decisions providing legal precedent, the contours of these battles have changed, and those seeking to reduce inequity have generally had the upper hand, at least within the legal arena. Change may be slow, but the overall direction of state and federal educational policy since *Brown* has been toward increasing the rights and opportunities of those previously denied.

Conclusion

Forty years after the *Brown* decision, racial inequality in education remains a burning and largely unresolved issue. However, unlike the

34. Derrick A. Bell, Jr., *Serving Two Masters: Integration Ideals and Client Interest in School Desegregation Litigation*, 85 *YALE L.J.* 470, 471-72 (1976).

35. Susan Greenblatt & Walter McCann, *Courts, Desegregation and Education: A Look at Boston* (unpublished paper, Harvard Graduate School of Education, Harvard University, 1979) (cited in KIRP, *supra* note 11, at 70).

36. In New Jersey efforts undertaken by Democratic Governor Jim Florio to equalize school district funding in 1991 led to a revolt by voters and resulted in the election of a Republican majority in the state legislature in 1992. Battles over implementation of equalization policies continue today.

America of 1954 when the issues were more clear cut and inequality was literally a "black and white" issue, today the problems seem more complicated. Integration is generally no longer seen as the answer to racial inequities in education. Instead, attention has focused on equity in resources and strategies to increase minority student achievement.

As the contours of the debate have changed, policymakers at the federal, state and local levels have had to create new ways of responding to demands for educational equality. Moving forward has not been easy due to the lack of consensus over the meaning of equality. While support for equality of opportunity seems to be widely embraced in educational policy and in the public discourse and rhetoric of the post-civil rights era,³⁷ equality in results remains far more controversial. Ongoing battles over desegregation, bilingual education, affirmative action in college admissions, the cultural content of school books and curricula, and ability grouping all suggest that racial issues will continue to be the source of tremendous conflict. However, to the extent that *Brown* ensconced the principle of equal access in the policies and practices of public school districts, the potential for reducing educational inequality between racial groups is greater now than it ever has been. We may still have a long way to go, but *Brown* has brought our society closer than ever to the fulfilling of the ideal of liberty and justice for all.

37. HACKER, *supra* note 5, at 135.